STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

In the matter of	*	12-MED-10-1268
	*	
Fact-finding between:	*	
	*	Martin R. Fitts
The City of Hamilton	*	Fact-finder
	*	
and	*	
	*	
IAFF Local 20	*	May 2, 2013
	*	
	*	

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REPORT AND RECOMMENDATIONS OF THE FACT-FINDER

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APPEARANCES

For the City of Hamilton (the Employer):

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Matthew D. Whitman
Downes Fishel Hass Kim LLP

For the IAFF (the Union):

Henry A. Arnett
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PRELIMINARY COMMENTS

The bargaining unit consists of all sworn employees of the Hamilton City Fire Department below the rank of Fire Chief, specifically all full time employees who hold the rank of fire fighters, lieutenants, captains, and Deputy Fire Chief, and excluding the Fire Chief. There were 103 employees in the unit as of January 29, 2013.

The collective bargaining agreement expired on December 31, 2012. Negotiations occurred throughout November, December, and January of 2012 and 2013 on the following dates: November 13, 2012; November 20, 2012; December 3, 2012; December 5, 2012; December 10, 2012; December 19, 2012; December 20, 2012; January 10, 2013; and January 16, 2013

This Fact-finder was appointed by SERB on November 26, 2012. Mediation was conducted on January 31, 2013 and February 1, 2013. While mediation resulted in the tentative agreement of several issues, after mediation there remained at impasse issues contained in 20 Articles. The twenty remaining Articles (with numerous sub-issues) at impasse were submitted to Fact-finding. The Fact-finding Hearing was conducted over three days (February 26, 2013; February 27, 2013; and March 15, 2013). Both parties submitted pre-hearing statements, attended the hearing and elaborated upon their respective positions. Post-hearing statements were then submitted to the Fact-finder.

In rendering the recommendations in this Fact-finding Report, the Fact-finder has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-05 (J), the Fact-Finder considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

All references by the Fact-finder in this report to the Employer's proposal and the Union's proposal are references to their respective final proposals as presented to the Fact-finder at the hearing conducted on February 26, 2013; February 27, 2013; and March 15, 2013.

GENERAL COMMENTS

There was a voluminous record generated during the three days of the hearing. A considerable amount of the record dealt with the overall economic condition of the City. It is not the purpose of this Report to summarize all of the economic and financial data that was presented at the hearing. However the parties should be assured that all of the testimony, evidence, and argument presented at the hearing has been considered in the fashioning of this Fact-finding Report. That being said, it is undeniable fact that the City's general fund revenue has trended downward since 2008, with the significant exception being 2011. The 2011 windfall was due to an exceptionally large amount of revenue from the state's inheritance tax, which is a revenue stream that no longer is available to the municipalities in Ohio. In fact, general fund revenue in 2012 was more than 12% below the 2008 baseline. This is a very significant decline, with no certainty that it will reverse in 2013 or the near future. The City's costs, including those for health insurance, have not correspondingly declined.

The Employer presented considerable evidence that other City employees, including those in the FOP bargaining unit, have sacrificed financially in the last few years. This has included manpower reductions, the foregoing of non-core economic benefits, wage freezes and furlough days.

Certainly the sacrifices of different employee groups have varied from year to year. However the undeniable conclusion is that this bargaining unit has fared well in comparison to other employee groups. Given that, and given the lack of an immediately improving economic condition for the City, it is fair that this bargaining unit, and the Fire Department itself, undergo significant

changes, many of which are recommended in the Berkshire Report commissioned by the City. Others are reflected in this Fact-finding Report.

The Fact-finder is persuaded by the Employer's evidence that general revenue has been steadily declining and there is no solid evidence that this will change during the life of this new agreement. This Fact-finding Report attempts to balance the economic pressures for cost reductions with fairness for the bargaining unit employees, while remaining cognizant that the taxpaying public, through their elected officials, ultimately have the last say in municipal service levels.

ISSUES AND RECOMMENDATIONS

Issue: Article 7 – Work Complement, Layoffs

Positions of the Parties

The Employer proposed the following changes to this article, including:

Section A - Change to require only one (1) paramedic on medic unit; change application of staffing requirement of aerial tower, engine company and quint to "when dispatched";

Section B - Expand application of relevant O.R.C. sections to "other employees covered by this agreement" in addition to firefighters; and

Section C - Remove entire section requiring minimum manning by requiring a minimum number of apparatus.

The Union proposed the following:

Section A - Current contract language;

Section B - Add violations of section appealable through grievance procedure; and

Section C - New minimum daily staffing of 25 fire fighters; remove last sentence.

Discussion

Section A of the current agreement provides manning requirements for various pieces of equipment operated by the Fire Department. It provides adequate numbers of fire-fighters for each firefighting apparatus, minimally providing safety to those responders. Certainly in the arena of fighting fires, it is hard to argue against the claim that more firefighters equal greater firefighter safety. But there are always the issues of budgetary reasonableness and community/taxpayer willingness to pay for the firefighting service to deal with. The City's Berkshire Report did not cite the current fire-fighting apparatus manning requirements in the collective bargaining agreement as unreasonable, unsafe or in need of revision. In fact, neither party suggested revising Section A with regard to the manning of each fire-fighting apparatus.

The Employer did propose changing the requirement in Section A for two paramedics to man each medic unit to instead mandate that one paramedic must be assigned to each. The Fire Chief testified that his desire is to always man a medic unit with two paramedics. In reality, with approximately 75% of the bargaining unit members being certified paramedics, the Fire Chief stated that this provision would allow him flexibility on the odd day when the second paramedic would not be available.

Section B of the agreement currently references only "firefighters" and is not expressly inclusive of any and all non-firefighters in the bargaining unit. There was no compelling argument made against this proposed change, which was characterized as more clarification than a change.

Section C in the current agreement provided that the minimum staffing provision requiring no less than twenty-five bargaining unit employees to be on duty each day "shall expire, cease to exist and become null and void on December 30, 2012." This provision existed in the agreement prior to the contract extension that expired on December 31, 2012. This means the not only had the parties previously agreed that this provision would expire, the parties retained this sunset provision when they extended the agreement one day beyond this provision's expiration.

Clearly and unambiguously there is no longer a requirement for a minimum daily complement of bargaining unit employees in the agreement; this requirement expired on December 30, 2012. The parties expressly stated that this provision would sunset on December 30, 2012, and had the opportunity to change that provision when they extended the agreement through December 31,

2012. They did not do so. There can be no dispute, therefore, that the Union's proposal for a provision requiring a complement of 25 bargaining unit employees is, therefore, a proposal for a new contract provision. As such, it is necessary for the Union, as the moving party, to provide a compelling reason for the new language.

The ability to determine manpower needs is an inherent, fundamental management right unless limited by a collective bargaining agreement. Generally, employers are presumed to know best how many people it needs to perform its desired output of work. Certainly many employers face uncertain manning needs at times, and one of the key protections that the law and labor agreements give employees is certainty as to overtime compensation and call-in procedures when employees are required work beyond the normal or agreed-upon work week, protections against or limiting contracting out bargaining unit work, or other matters. But all employers, whether private of public sector, have the inherent right to determine how much production or work they desire to have their employees produce. In the public sector the taxpayers, through their elected officials, ultimately retain the right to determine what their desired level of service is, whether it be fire, medical emergency, policing, parks, recreation programs, street repairs or any other public service.

Findings and Recommendation

Regarding Section A, the Fact-finder believes that the Employer's proposal to reduce the mandate of two paramedics to one per medic unit is compelling. No fire-fighter safety is at issue; rather what is at issue is the level of medic service that the City will provide. Assuming the Fire Chief does, in fact, staff medic units with two paramedics as often as possible, this should still provide adequate service while allowing the City to actually increase the number of medic units at certain times during the week.

Regarding Section B, the Employer's proposal to add "other employees covered by this agreement" is basically a clarification and makes sense. The Union's proposal to add language providing that violations of Section B would be appealable through the grievance procedure also makes sense. When a collective bargaining agreement includes specific procedures that mandate what one party or the other must follow, reasonableness dictates that failure to follow such provisions should be grieve-able under the contract.

Regarding Section C, the Employer's proposal for the removal of the entire section simply removes language that was made irrelevant and extraneous with the sunset of the provisions of Section C on December 30, 2012, to which the parties had previously agreed. It is, therefore, compelling. The lack of a minimum staffing level for the Fire Department provides the City, through its Fire Chief, budgetary process, and ultimately its elected officials, to determine the desired level of firefighting and medic services to be provided to the public. Neither fire protection service levels nor medic service levels are mandated as a rule of law, but rather are provided by municipalities at levels based upon their taxpayers desire to pay for same. In this case the City's elected officials should properly be given back the authority to make such decisions on behalf of the community, and ultimately bear the scrutiny of the taxpayers at election time.

Therefore the Fact-finder recommends the Employer's proposal for Section A.

Further, the Fact-finder recommends that Section B be amended to include the Employer's proposed addition to add the phrase "other employees covered by this agreement" where appropriate, as well as amended to include the Union's proposal to add the provision that "Any violations of this Section shall be appealable through the grievance procedure."

Lastly, the Fact-finder recommends the Employer's proposal that the entire Section C be removed from the collective bargaining agreement.

Issue: Article 9 – Work Week

Positions of the Parties

The Employer proposed the following changes to this Article:

Section A - Change average work week from 48 hours to 52 hours (with note for change throughout Agreement); new employees work 53 hour work weeks;

Section B - Amends that 40 hour employees may work 4-10 hour days "with approval of the Chief"; and

Section E - Add limit of 48 consecutive hours that employees may work.

The Union proposed the retention of current contract language for this Article.

Discussion

With regard to Section A, the Employer argued that the average work-week was out of step with what other comparable departments work. To be sure, the Berkshire Report addresses work week as an issue that the City should deal with. However, the City's argument for such an expansion is ultimately not compelling.

In reality, an expanded work-week is very dissimilar from the furlough days that other City employees have had. Furlough days are mandated *unpaid leave*. During furlough the affected employees do not report to work and are free to conduct any personal business they choose. The proposal to add additional hours to the work-week of firefighters, however, is mandatory *unpaid work*, during which the affected employees would be required to be at work and perform all work in the same fashion as all other hours.

There was no evidence that any other City employee has been required to work additional hours, or *any* hours, without pay. There cannot, therefore, be any comparison of the furlough days given other employees, and this proposal of the Employer for an extended workweek.

The Employer's proposed expansion of the workweek is perhaps more appropriately characterized as a reduction in the hourly wage. Certainly the 24-hours on/48 hours off tour schedule traditionally worked by firefighters results in significant days off during the year. And just as certainly firefighters may have considerable "down time" during their tour, depending on service calls. However, none of that provides a compelling argument that the number of hours worked should be increased without corresponding compensation. While the Employer's evidence showed that other City employees had taken furlough days and foregone non-core benefits, there was no evidence that anyone had agreed to an actual reduction in their hourly wages.

While the City undeniably is in difficult economic times, the recommendations contained elsewhere in this Fact-finding Report, most especially with regard to manning levels and health insurance, should give the Employer adequate tools to fairly achieve shared sacrifice from the

Fire Department budget. The Employer's proposal for additional hours in the workweek, absent compensation for same, is simply beyond what can be considered "shared sacrifice" and cannot be justified.

With regard to Section B, the Employer's proposal for adding "with approval of the Chief" to this provision, there certainly is a justifiable rationale. The ability of the Chief to control the scheduling of employees under his command is essential to ensure appropriate staffing and flexibility for same.

Findings and Recommendation

The Fact-finder finds the there is no compelling reason to change Section A as proposed by the Employer, nor for the Employer-proposed new Section E. However, there is a compelling argument for the adoption of the Employer's proposal for Section B. This is a management tool that should properly come under the control of the Chief.

Therefore the Fact-finder recommends the Union's proposal that current contract language be retained for Sections A, C & D in this Article.

In addition, the Fact-finder recommends the Employer's proposal for amending Section B to provide that the Chief's approval is required to work a 4 day-10 hour day workweek.

Issue: Article 10 – Kelly Day

Positions of the Parties

The Employer proposed the following changes:

Section C - Change average work week from 48 hours to 52 hours;
Former Section L - Remove provision regarding Assistant Fire Chiefs scheduling;
New Section L - Fire Chief can require the rescheduling of Kelly Days in the event of reductions or layoffs in the Fire Department;

New Section M - When reduction in force occurs, the number of ranked positions may be reduced

The Union proposed the Current contract language except for Section E that has been previously tentatively agreed upon by the parties.

Discussion

In light of the Recommendation regarding workweek contained in this Report, there is no need to change Section C.

The Employer argued that in the event of a reduction in force, its proposals for new language in Section L and Section M are necessary to ensure that the City can adjust to a new schedule. This is reasonable. Saddling the City with unwieldy or unworkable language should it layoff firefighters could result in unreasonably increased costs for overtime. The Union argued that these changes would give the Employer too much control over scheduling. However, should a reduction in force occur, the Fire Chief will need to have the tools necessary to ensure that the department can achieve a smooth transition. The Employer's proposed changes will provide for that.

Findings and Recommendation

The Fact-finder finds the Employer's proposal for new language for Section L and Section M to be reasonable and compelling, but finds that the current contract provisions for Section C should be retained.

Therefore the Fact-finder recommends that current contract language be kept for Section C.

Further, the Fact-finder recommends the Employer's proposals for the removal of Section L, its proposal for replacing it with a new Section L, and the addition of a new Section M.

Issue: Article 12 – Wages, General Adjustment

Positions of the Parties

The Employer proposed the following changes:

Remove Sections A-D containing wage increases from prior years and reopener language for 2012;

Wage freeze for 2013, 2014 and 2015;

Step freeze for 2013, 2014 and 2015;

Remove restriction on direct deposit; and

Move 15% Deputy Chief rank differential to wage scale.

The Union proposed the following changes:

Sections A,B,C - 3% wage increase in 2013, 2014 and 2015; and

Section F - Remove retroactivity of rank differential to 1/1/2010

Discussion

The City's lagging economic condition is beyond question, and has been discussed earlier in this Report. The evidence was clear that this bargaining unit has been spared some of the economic sacrifice that other City employees have borne in the last several years. Further, the City's prospects for a quick, substantial economic turn-around during the life of this new agreement are likely not good.

The Union argued that the salary and benefit structure for police officers in the City has not been reduced, but did not offer compelling evidence that a 3% wage increase annually was warranted, especially in light of the fact that this Report does not recommend any alterations to the workweek. In fact, given the fiscal realities facing the City, the Union's argument for *any* wage increase during the life of this agreement is without merit.

The argument for the preservation of progression through the wage steps found in Appendices A&B is, however, compelling.

Findings and Recommendation

The Fact-finder finds the Employer's proposal for a wage freeze for 2013, 2014 and 2015 to be reasonable. However, the Fact-finder finds it reasonable for employees still progressing through the wage steps to continue this progression through the years of this agreement.

Therefore the Fact-finder recommends that Article 12 be amended to provide for 0% wage increases for 2013, 2014 and 2015.

The Fact-finder expressly does not recommend the Employer's proposal to freeze progression through the wage steps, which is consistent with recommendations found later for Article 14.

Additionally, the Fact-finder recommends that the rank differential language be retained in Article 12, with the addition of the phrase "to be reflected in Appendices A&B" to the provisions.

Lastly, the Fact-finder recommends that the provision in the current Section dealing with Direct Deposit be modified to read: "The City of Hamilton may, at its discretion, require all bargaining unit employees to enroll for direct deposit of pay."

Issue: Article 13 – Preferential Supplemental Pay

Positions of the Parties

The Employer proposed the following changes:

Section 2 - SCBA: Remove paragraph C, restriction on hours per day; Remove paragraph D, mandate of minimum of 6 employees with SCBA certification;
Section 4 - Paragraph F - Remove reference to future negotiations for additional rescue certification supplements;
Section 5 - Remove supplemental pay for Apparatus Driver; and
Section 6 - Remove supplemental pay for Physical Fitness Incentive

The Union proposed the retention of current contract language.

Discussion

The Employer argued that the changes it proposed in this article regarding SCBA repair, testing and certification are necessary to provide the Fire Chief with greater management control and to provide cost savings to the City. The Union argued that the current language has served the City well, and that there was no reason to make changes.

With regard to the two supplemental pay provisions, the Union argued that the apparatus driver supplement was included in just the 2008 contract, and questioned why now the City wants to remove a provision it so recently agreed with.

Findings and Recommendation

The Fact-finder finds that the current language regarding SCBA to be sufficient, with no compelling reason to recommend changes.

With regard to the supplemental pay for Apparatus Drivers, as this was agreed upon and placed into the agreement in 2008, there is no compelling reason to remove it at this time.

Lastly, with regard to the physical fitness incentive, it makes sense to retain this supplemental pay as greater emphasis on wellness will have a positive impact on the cost of health insurance, as well as contribute to greater firefighter safety.

Therefore the Fact-finder recommends the Union proposal for the retention of current contract language for Article 13.

Issue: Article 14 – Merit/Step Adjustments

Positions of the Parties

The Employer proposed the following changes for this article:

"Freeze" step advancements in calendar years 2013, 2014, 2015, and until a new Agreement is reached. Employees advance in steps following the freeze, but do not receive credit for years during the entire period of the freeze, including extensions.

The Union proposed the retention of current contract language.

Discussion

The Employer argued that its proposal would be a necessary part of the overall cost-savings that the City needed to achieve.

Findings and Recommendation

The Fact-finder finds the Employer's proposal to be unfair to the employees. To freeze these affected employees from progressing through the steps unfairly creates savings for the City at the expense of just some of the members of the bargaining unit, and does not follow the logic of "shared sacrifice" that the Employer made for other changes in this agreement and that, in fact, drives many of the changes recommended by this Fact-finder elsewhere in this Report.

Therefore the Fact-finder recommends that the Union's proposal for the retention of current contract language.

Issue: Article 15 – Longevity

Positions of the Parties

The Employer proposed the following:

Freeze/suspend longevity payments for duration of Agreement and extensions and until new agreement; and

Employees hired after 1/1/13 not eligible for longevity.

The Union proposed the retention of current contract language.

Discussion

The Employer argued that these cost savings were necessary as part of the overall savings it needs to achieve.

The Union argued that essentially everyone in the City draws longevity and doesn't believe it is fair to eliminate it for new hires or freeze it for the current employees.

Findings and Recommendation

The Fact-finder finds the Employer's proposal has merit in the short term, but to freeze longevity for the entire three year duration of the agreement is ultimately unfair to the employees in consideration of the three-year wage freeze recommended elsewhere in this Report. Rather, a freeze for 2013 and 2014, with a full reinstatement effective January 1, 2015 is more appropriate. This will provide the City with some economic relief in the short term, but in the last year of this agreement it will provide the bargaining unit members with some increase in wages in 2015 to offset the impact of the recommendations made elsewhere in this Report.

As to the Employer's proposal to eliminate longevity for employees hired after January 1, 2013, this essentially creates a two-tier wage system. While this will create economic relief for the Employer in the future, the impact for the duration of this agreement would be minimal. The Fact-finder believes that the better approach to dealing with the longevity issue in the long term is to address it in future negotiations when the Employer and Union can reach agreement on how to eliminate longevity altogether if they mutually desire.

Therefore the Fact-finder recommends that the Merit Adjustments provided for in Article 15 be frozen for 2013 and 2014, but be fully reinstated effective January 1, 2015.

Issue: Article 16 – Clothing Allowance

Positions of the Parties

The Employer proposed the following changes to this article:

Freeze/suspend clothing allowance in calendar years 2013, 2014, 2015, and until a new Agreement is reached;

Paragraph C - Revise language for suspension of clothing allowance in 2013-2015; and

Paragraph H - Remove payout of uniform allowance to employees at separation

The Union proposed the retention of current contract language.

Discussion

The Employer argued that its proposal was necessary to achieve the cost savings it desires in the Fire Department budget.

The Union argued that the allowance allows for duty uniforms to be cleaned and pressed, noting that this bargaining unit's working conditions justify the continuation of this allowance.

Findings and Recommendation

The Fact-finder finds, as with other cost items, some short term relief for the City may be appropriate but a freeze of the clothing allowance for the entire agreement is not warranted. In reality, just as the cost to the City to maintain and replace equipment has not diminished, the cost to the bargaining unit members to maintain and replace uniforms does not go away simply due to a reduced ability of the City to provide an allowance for same. Fairness suggests that a sharing of this cost in the short term is reasonable, but a total elimination of the allowance is not.

Therefore the Fact-finder recommends that Article 16 be amended to provide for a Clothing Allowance of $350 in 2013, provide for an allowance of $350 in 2014, and provide that the Clothing Allowance return to $700 for 2015.

Issue: Article 18 – Overtime

Positions of the Parties

The Employer proposed the following changes to the article:

Section 1A - Limit consecutive hours worked to 48;

Section 1B - Overtime Selection By Rotation - Modify paragraph outlining overtime rotation provisions for acting officers and Deputy Chiefs;

Section 1D - Change when overtime opportunities become mandatory overtime from 2 rotations of the overtime list to 1 rotation of the overtime list;

Section 1D - Mandatory overtime will not be charged to employee's overtime accumulation "for rotation consideration";

Section K - Change hours of work from 48 to 52 hour week; and

Section 4B - Modify application of hold-over pay provision, mandatory 2 hour minimum overtime pay, if hold-over is due to employee tardiness

The Union proposed the retention of current contract language.

Discussion

The Employer argued that controlling overtime costs is critical for the department. In fact the department has already implemented overtime cost reductions. The recommendations for manning/staffing found elsewhere in this Report will also contribute greatly to the Employer's ability to contain these costs.

As to the Employer proposal for Section 4B, this provision would penalize the wrong employee. Tardiness should be addressed with the offending employee. Employees held over for any reason are inconvenienced through no fault of their own, and deserve to be compensated fairly for that. Additionally, the recommendations contained elsewhere in this Report will give the Fire Chief the flexibility to determine if he needs to hold over an employee to fill a short term vacancy caused by tardiness, thus potentially eliminating this situation for the most part.

Findings and Recommendation

The Fact-finder finds that the current contract language, in concert with recommendations found elsewhere in this Report, provides the necessary management tools to the Employer to control overtime costs.

Therefore the Fact-finder recommends that the Union's proposal for the retention of current contract language for this Article.

Issue: Article 19 – Compensatory Time

Positions of the Parties

The Employer proposed the following changes to this article:

Section B - Add language that compensatory leave requests are subject to Shift Commander approval;

Section C - Change language to make cash out of compensatory time optional instead of mandatory, at option of City;

Section C - Add requirement that retiring member is paid for "unused compensatory time" up to 200 hours; and

Section D - Add that comp time use will not result in overtime and is subject to available slots for one member.

The Union proposed the retention of current contract language, with the exception of the provision tentatively agreed upon that the notification period be changed from 72 to 71 hours.

Discussion

The Employer argued that its proposals were necessary to allow the Fire Chief to control scheduling in order to avoid the use of overtime to fill vacancies on shifts. The proposals for Sections B and D do provide greater management control for the Employer.

The Employer proposals for Section C, however, unfairly restrict the employees from taking cash instead of compensatory time. This is compensation that the bargaining unit employees have already earned, and considering the changes in Sections B&D recommended above, retaining the provisions of Section C allows the employees to retain some control over how they receive this earned compensation.

Findings and Recommendation

The Fact-finder finds the Employer's argument for its proposals for Section B and D to be reasonable and compelling, and finds the Union's arguments for the retention of current contract language in Section C likewise to be reasonable and compelling.

Therefore the Fact-finder recommends that the Employer's proposals for Section B and for Section D be incorporated into this Article, but that current contract language be retained for Section C.

Issue: Article 20 – Holiday Provisions

Positions of the Parties

The Employer proposed the following changes for this article:

> Sections D,E,F,G,H,I,J,K - Remove premium pay of 2X per hour for hours worked on a fixed date holiday and provisions regarding double time holiday pay

The Union proposed the retention of current contract language.

Discussion

The Employer argued that its proposed changes were necessary to achieve the overall cost reductions it is seeking in the Fire Department.

The Union argued that unlike many other City employees, this bargaining unit is regularly scheduled to work on holidays. And unlike other City employees, when members of this

bargaining unit work a holiday their tour incorporates most of the day, not just an 8-hour shift. The Union argued that the current contract provides fair compensation in return for this.

Findings and Recommendation

In light of the many changes recommended elsewhere in this Report, the Fact-finder finds the Union's proposal for the retention of current contract language to be persuasive.

Therefore the Fact-finder recommends that the Union's proposal for the retention of current contract language for this Article.

Issue: Article 21 – Vacation

Positions of the Parties

The Employer proposed the following changes for this article;

Section F - Prorate vacation leave cash-out to month of separation in year of separation, eliminate employee with one day service cashing out a full year of vacation leave;
Section G - Remove section related to vacation leave upon separation for employees not in active service at the time of separation;
Section K - Promoted employees reassigned to another shift are permitted "up to" 5 tours of vacation, clarification of language;
Section M - Prorate vacation leave for employees absent from service due to injury;
Section N - Prorate vacation pay out for employee who retires due to illness or injury based on months worked during the year;
Section 2, A - Scheduling - Change number of persons permitted to be off on any one date from 7 employees to 4 employees, for all paid leave, time off;

The Union proposed a new Section 3A and 3B such that:

New Section 3A - Employee may opt to work up to 5 days of his vacation leave and receive pay in lieu of time off;

Alternatively, employee may opt to convert 5 days of his vacation leave to compensatory time provided employee does not have 200 hours. Max 5 days paid, converted or any combination of the two; and

New Section 3B - Pay for vacation worked in next pay period or on overtime check; No vacation carryover except as otherwise provided in Agreement; Max payment of 5 days at double time rates for worked vacation days.

Discussion

The Employer proposals for Sections F, G, K, M and N are all reasonable. Those that provide for a proration of vacation will ensure that vacation is awarded based on time actually worked and will eliminate the unfair enrichment of employees who, in the past, have received benefits that were essentially un-earned.

Regarding Section 2, A the Employer's proposal to change the number of persons permitted to be off on any one date from 7 employees to 4 employees, for all paid leave is compelling and reasonable. This is consistent with the Recommendation found above for Article 7 that allows the City to determine the staffing levels for the Fire Department and could lead to fewer employees working on a particular shift than currently is the case. Further, given the inherent schedule of firefighters, and the ability to trade tours as preserved in elsewhere in this Report's Recommendations, there should be nor undue restriction as to a firefighter's ability to have desired time off work.

The Union provided no compelling argument against these changes, nor did it provide a compelling argument for its proposed changes.

Findings and Recommendation

The Fact-finder finds the Employer's arguments for changes in this article to be compelling.

The Fact-finder does not find a compelling reason for the Union's proposal to add new provisions through a new Section 3 to this Article.

Therefore the Fact-finder recommends the Employer's proposals for this Article, and specifically does not recommend the Union's proposal for the addition of a new Section 3.

Issue: Article 22 – Trading of Tours

Positions of the Parties

The Employer proposed the following changes to this article:

> Section 2, A - Add limit that employee may not work more than 48 consecutive hours (all other provisions agreed to at fact finding).
>
> The Union proposed the retention of current contract language.

Discussion

The Employer argued that it could be unsafe for employees to work more than two consecutive tours, or 48 straight hours. If offered no compelling evidence that this is true, except the reference in the Berkshire Report that this may be true, and the testimony of one Union witness that acknowledged it may be true.

Without evidence that this has been a problem in the past, or more clear evidence regarding the safety aspect of limiting the consecutive tours to no more than 48 hours, there is simply no compelling reason to support the Employer's proposal.

Findings and Recommendation

The Fact-finder finds the Employer's proposal for a limit on the ability to trade tours has no compelling objective evidence to support it.

Therefore the Fact-finder recommends the Union's proposal that current contract language be retained.

Issue: Article 23 – Attendance Incentive

Positions of the Parties

The Employer proposed the following change for this article:

Remove supplemental pay for this program.

The Union proposed the retention of current contract language

Discussion

The Employer did not provide a compelling argument for its proposal, only than that it would contribute to the overall cost reductions it is seeking in the Fire Department budget.

The Union argued that this benefit has not come out of the City's contract with the FOP, and sees no reason for it to be removed from this agreement.

Findings and Recommendation

The Fact-finder finds that this is not a significant cost to the City and in light of other changes recommended elsewhere in this Report, the City will find adequate economic relief without the elimination of this minimal supplemental pay.

Therefore the Fact-finder recommends the Union's proposal for the retention of current contract language for this article.

Issue: Article 28 – Union Business and Article 29 – Union Leave

Positions of the Parties

The Employer proposed the following changes for Article 28:

Section B - Remove unlimited carryover of paid union leave; and

Article 28, Section E - Remove requirement to pay overtime to fill vacancies resulting from absence due to Union Business Leave

Additionally, the Employer proposed the following change in Article 29:

Modify that Union Business Leave would be "without" pay.

The Union proposed the following changes for Article 28:

Increase max union business leave in 28.B to 12 tours in even numbered years and 7 in odd numbered years; and

Change 4 employees to 2 in 28.C.

Additionally, the Union proposed the following change for Article 29:

Delete in concert with Union proposal for the changes in Article 28.

Discussion

Both parties had proposals, tied together, for modifications to Article 28 and Article 29. However, no compelling argument was presented to necessitate a change in either article.

Findings and Recommendation

Therefore the Fact-finder recommends that current contract language be maintained for Article 28.

Additionally, the Fact-finder recommends that current contract language be maintained for Article 29.

Issue: Article 30 – Medical Insurance

Positions of the Parties

The Employer proposed the following changes for this article:

Section 1 - Remove requirement that plan provided by City be recommended by health/benefits subcommittee;
Section 1 - Remove expired language that plan provided by City be managed care, point of service plan and be packaged with vision and dental coverage;
Section 1 - Add new language to give Employer right to secure alternate insurance carriers and modify coverage, to allow City to change content of insurance plan and/or carrier after consultation with union representatives, and to meet with the union to discuss increases in premium costs;
Section 1 - Add language (replaces Section 2B) for Health Benefits Committee;
Section 1 - Clarify that employee premium contribution will be the amount paid by other City employees;
Section 2, B - Remove paragraph B requiring employer to pay its portion of medical and life insurance premiums for 6 months after expiration of employees' accumulated sick leave; and
Section 3 - Revise language regarding Health Benefits Committee, move to Section 1.

The Union proposed the retention of current contract language.

Discussion

Much testimony, evidence and argument was placed on the record with regard to this article. The Employer argued that its proposed changes were necessary to bring this very large cost item under control and to allow the City the flexibility it needs to contain these costs during the life of this agreement.

The reality is that health insurance remains a huge financial issue for both employers and employees. Changes in federal law will surely have an impact on these costs, but the actual affect of these changes remains somewhat unknown.

The evidence showed that the City has, in the past, had an effective employee/employer committee that has studied the issues and made recommendations to the City, which the Employer has often voluntarily followed. The fact remains, however, that change is inevitable and health care costs are likely to increase for both employees and the Employer during the life of this agreement. There is no way to isolate either the bargaining unit employees or the City from

the uncertainties inherent in health care benefits at the present time, thus the concept of "shared risk" applies. The Employer's proposals for changes to this article are reasonable and compelling, even if unpalatable to the bargaining unit. Certainly this represents some major changes in the collective bargaining agreement, but on this issue major changes are appropriate to ensure fairness for all.

The Fact-finder does not take lightly the fact that the employees are likely to bear rising costs for health insurance during this agreement at a time when they will not receive an increase in wages. However, given the economic realities facing the City, the undeniable fact is that the only reasonable method of dealing with the health insurance is to ensure that the burden of increased risks and costs are shared in a fair manner by the City and all of its employees, including those in this bargaining unit.

Findings and Recommendation

The Fact-finder finds the Employer's argument in favor of its proposals to be fair, reasonable, and compelling.

Therefore the Fact-finder recommends completely the Employer's proposal for changes to this Article.

Issue: Article 35 – Educational Assistance Program

Positions of the Parties

The Employer proposed the following change:

Remove supplemental pay for this program.

The Union proposed the retention of current contract language.

Discussion

The Employer argued that its proposal for the removal of this provision to be necessary to achieve the overall cost reductions it desires from the Fire Department budget.

The Union argued that others in the City, specifically those in the FOP bargaining unit, enjoy a far greater educational benefit than this bargaining unit receives.

Findings and Recommendation

The Fact-finder finds the cost for this program is not extreme, and that the nature of work today as a firefighter or paramedic requires an educated workforce. Ultimately there is value to the City and its residents that this contract provision remain in force.

Therefore the Fact-finder recommends the Union's proposal for the retention of current contract language.

Issue: Article 46 – Duration

Positions of the Parties

The Employer proposed that the new agreement be:

Effective on the date of execution through December 31, 2015.

The Union proposed that the new agreement be:

Effective January 1, 2013 through December 31, 2015.

Discussion

The Employer argued that this agreement should be effective on the date of execution, while the Union argued that an effective date of January 1, 2013 was more appropriate.

Findings and Recommendation

The Fact-finder finds the Union's argument to be compelling.

Therefore the Fact-finder recommends the Union's proposal for the duration of the agreement to be effective January 1, 2013 through December 31, 2015.

Issue: Appendix A, B – Wage Scales

Positions of the Parties

The Employer proposed the following changes:

Freeze wages and steps for duration of contract and until new Agreement is reached;
Create new wage table for employees hired after 1/1/13 at 90% of current scale;
Freeze steps for duration of Agreement and until new Agreement is reached; and
Suspend longevity payments for duration of Agreement and extensions of Agreement for employees hired prior to 1/1/13; Employees hired after 1/1/13 not eligible for longevity.

The Union proposed the following adjustment to the wage scales:

2013 increase of 3%;
2014 increase of 3%; and
2015 increase of 3%.

Discussion

The Employer proposal for these Appendices includes the creation of a two-tier wage system for any employees hired after January 1, 2013. The Fact-finder does not find compelling evidence to support a proposal for such a two-tier system. Significant cost savings will not be experienced by the City during the life of this agreement, as it is unlikely that there would be a large exodus of bargaining unit employees during this time. Given the volume of changes recommended in this Report that will benefit the City economically, this proposal is found to be unnecessary.

Findings and Recommendation

Therefore the Fact-finder recommends that Appendix A & B be amended to reflect the 0% wage increase for 2013, 2014 and 2015 recommended above for all steps, as well as the recommendations for a suspension of longevity payments in 2013 and 2014 with reinstatement for 2015 found elsewhere above in this Report.

Additionally, the Fact-finder recommends the inclusion of an actual wage scale to reflect the recommendations in Article 12 relative to the provisions for rank differential found therein.

Further, the Fact-finder expressly does not recommend the Employer's proposal for a different wage scale and longevity schedule for employees hired after January 1, 2013.

Additional recommendations of the Fact-finder

The parties expressed to the Fact-finder that they had reached tentative agreements on numerous issues during their negotiations. During mediation the parties reached tentative agreements on several more issues.

The Fact-finder has reviewed all the tentative agreements reached by the parties during their negotiations, and finds them reasonable and fair to both of the parties and to the public.

Therefore, the Fact-finder recommends all tentative agreements reached by the parties during their negotiations, including those reached during mediation.

The above represents all of the Findings and Recommendations made by the undersigned Fact-finder in this matter.

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Martin R. Fitts
Fact-finder
May 2, 2013

Certificate of Service

I hereby certify that an exact copy of this Fact-finding Report was transmitted this day by email to: Kevin Rader at ArnettRader Consulting, Inc. (krader@arnettrader.com) representing IAFF Local 20; Marc A. Fishel at Fishel Hass Kim Albrecht LLP (mfishel@fishelhass.com) representing the City of Hamilton; and Mary Laurent at the Bureau of Mediation, State Employment Relations Board (Mary.Laurent@serb.state.oh.us).

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Martin R. Fitts
Fact-finder
May 2, 2013